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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SALVADOR MOLINA and JAVIER TEPEZILA,

Plaintiffs,

- against -

CELTIC TIGER INC. d/b/a THE BLACK SHEEP and THOMAS MCGRATH individually, and any other entities affiliated with or controlled by CELTIC TIGER INC. d/b/a THE BLACK SHEEP and THOMAS MCGRATH,

Defendants.

Case No.: 17-cv-1781

COMPLAINT

Non Jury Trial

Plaintiffs Salvador Molina and Javier Tepezila, by their attorneys Virginia & Ambinder, LLP, allege upon knowledge to themselves and upon information and belief as to all other matters as follows:

PRELIMINARY STATEMENT

1. This action is brought pursuant to the Fair Labor Standards Act (hereinafter referred to as "FLSA"), 29 U.S.C. § § 206, 207, and 216(b), New York Labor Law (hereinafter N.Y. Lab. Law) §§ 198-1(d), 195, and 190 *et seq.*, N.Y. Lab. Law § 633, N.Y. Lab. Law § § 650 *et seq.*, and 12 New York Codes, Rules, and Regulations (hereinafter referred to as "NYCRR") § § 146-1.2, 146-1.4, and 146-2.2-2.3 to recover overtime compensation and compensation for failure to provide paystubs owed to Salvador Molina and Javier Tepezila (hereinafter collectively "Plaintiffs") by Celtic Tiger Inc. d/b/a The Black Sheep, and Thomas McGrath individually (hereinafter collectively referred to as "Defendants" or "The Black Sheep").

2. Defendants operate a restaurant and bar known as The Black Sheep, located in Midtown Manhattan at 583 Third Avenue, New York, New York, 10016.

3. Beginning in approximately 2012 and, upon information and belief, continuing through the present, Defendants have engaged in a policy and practice of requiring Plaintiffs to regularly work in excess of forty (40) hours per week, without providing overtime compensation, as required by applicable federal and state law.

4. Beginning in approximately 2012 and, upon information and belief, continuing through the present, Defendants have engaged in a policy and practice of failing to provide Plaintiffs with a paystub for each pay period worked as required by applicable state law.

5. Under the direction of Thomas McGrath, and/or other shareholders, corporate officers, and/or directors associated with the Defendants, a practice was instituted of depriving Plaintiffs of the basic compensation for work performed each week, namely overtime compensation, as well as depriving them of paystubs for each pay period worked.

6. Plaintiffs have initiated this action seeking their earned but unpaid wages, including overtime and damages for failure to provide paystubs, plus interest, damages, attorneys' fees, and costs.

JURISDICTION

7. Jurisdiction of this Court is invoked pursuant to FLSA, 29 U.S.C. § 216(b), and 28 U.S.C. § § 1331 and 1337. This court also has supplemental jurisdiction under 28 U.S.C. § 1367 of the claims brought under the New York Labor Law.

VENUE

8. Venue for this action in the Southern District of New York under 28 U.S.C. § 1391 (b) is appropriate because a substantial part of the events or omissions giving rise to the

claims occurred in the Southern District of New York.

THE PARTIES

9. Plaintiff Salvador Molina is an individual who resides in New York, and who worked for Defendants from approximately November 18, 2012 through October 21, 2016. Plaintiff Molina worked in variety of positions, including cook and dishwasher.

10. Plaintiff Javier Tepezila is an individual who resides in New York, and who worked for Defendants from approximately March 2013 through April 2014, in variety of positions, including cook, dishwasher and stocker.

11. Upon information and belief, Defendant Celtic Tiger Inc. d/b/a The Black Sheep is a corporation incorporated under the laws of the State of New York, with its principal place of business at 583 Third Avenue, New York, New York, 10016 and is engaged in the restaurant business.

12. Upon information and belief, Defendant Thomas McGrath is a resident of 135 East 50th St., New York 10022, and at all relevant times was and is an, officer, general manager, director, president, vice president, and/or owner of The Black Sheep.

FACTS

13. The Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 12 hereof.

14. Upon information and belief, beginning in or about 2012, Defendants employed Salvador Molina to perform work as a cook and dishwasher The Black Sheep.

15. Upon information and belief, in or about March 2013, Defendants employed Javier Tepezila to perform work as a cook, dishwasher and stocker at The Black Sheep.

16. Upon information and belief, under 29 U.S.C. § § 201 *et seq.*, and the cases

interpreting the same, The Black Sheep constitutes an "enterprises engaged in commerce."

17. Upon information and belief, The Black Sheep generates more than $500,000.00 in annual volume of sales.

18. Upon information and belief, the payments made to Plaintiffs by Defendants constitute "wages," as that term is defined under Article 6 and Article 19 of the New York Labor Law.

19. Upon information and belief, while working for Defendants, Plaintiffs were regularly required to perform work for Defendants, without receiving overtime compensation, as required by applicable federal and state law.

20. While working for Defendants, Plaintiffs received their wages in cash and without a paystub for each pay period worked.

21. Plaintiff Salvador Molina worked at The Black Sheep as a dishwasher and a cook, from approximately November 18, 2012 through October 21, 2016. Plaintiff Molina typically worked five days a week. He typically worked from 11:00 a.m. through 11:00 p.m. without any break. He received a flat hourly rate of approximately $16.00 to $17.00 in cash for all hours worked.

22. Plaintiff Javier Tepezila worked at The Black Sheep mainly as a dishwasher and a cook, but also stocking vegetables, from approximately March 2013 through April 2014. Plaintiff Tepezila typically worked six days a week. His shifts were as follows: Tuesday, Wednesday and Thursday from approximately 8:00 a.m. until 5:00 p.m.; Fridays, Saturdays, and Sundays from approximately 8:00 a.m. until 10:00 p.m. He received a flat hourly rate of approximately $11.00 in cash.

23. Upon information and belief, Defendants willfully disregarded and purposefully

evaded the recordkeeping requirements of the Fair Labor Standards Act and applicable State law by failing to maintain proper and complete timesheets or payroll records.

24. Upon information and belief, Defendant Thomas McGrath was an officer, general manager, director, shareholder, and/or president or vice president of Defendant The Black Sheep, and (i) had the power to hire and fire Plaintiffs; (ii) supervised and controlled Plaintiffs' work schedule or condition of employment; (iii) determined Plaintiffs' rate and method of payment; and (iv) maintained Plaintiffs' employment records.

25. Upon information and belief, Defendant Thomas McGrath dominated the day-to-day operating decisions of Defendant The Black Sheep, made major personnel decisions for The Black Sheep, and had complete control of the alleged activities of The Black Sheep, which give rise to the claims brought herein.

26. Upon information and belief, Defendant Thomas McGrath was a supervisor, officer and/or agent of Defendant The Black Sheep, who acted directly or indirectly in the interest of Defendant The Black Sheep, and is an employer within the meaning of the Fair Labor Standards Act. Thomas McGrath in his capacity as officer, director, shareholder, and/or president or vice president, actively participated in the unlawful method of payment for Plaintiffs.

27. At all times relevant to this action, Defendant Thomas McGrath was an officer, president, owner and/or shareholder of The Black Sheep. Plaintiffs performed labor at Defendant The Black Sheep.

FIRST CAUSE OF ACTION AGAINST DEFENDANTS: FLSA OVERTIME COMPENSATION

28. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 27 hereof.

29. Pursuant to the FLSA, 29 U.S.C § 207, "no employer shall employ any of his

employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty (40) hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

30. Celtic Tiger Inc. constitutes an employer within the meaning contemplated in the FLSA, 29 U.S.C. § 203(d).

31. Pursuant to 29 U.S.C. § 203(d) and the cases interpreting the same, Thomas McGrath constitute an "employer" for the purpose of the FLSA and, consequently, is liable for violations of the FLSA.

32. Plaintiffs are employees within the meaning contemplated in Fair Labor Standards Act ("FLSA"), 29 U.S.C. §203(e).

33. Defendants failed to pay Plaintiffs overtime wages at the rate of one and one half times the regular rate of pay, for all hours worked after the first forty (40) hours in any given week, in violation of 29 U.S.C. § 207.

34. The failure of Defendants to pay Plaintiffs their rightfully owed overtime compensation was willful.

35. By the foregoing reasons, Defendants are liable to Plaintiffs in an amount to be determined at trial, plus liquidated damages in the amount equal to the amount of unpaid wages, interest, and attorneys' fees and costs.

SECOND CAUSE OF ACTION AGAINST DEFENDANTS: NEW YORK OVERTIME COMPENSATION LAW

36. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 35 hereof.

37. New York State law mandates that employers pay their employees one and one-half times the ordinary minimum wage rate for any hours over forty that they work per week. 12 NYCRR § 146-1.4.

38. 12 NYCRR § 146-1.4 requires that, "[a]n employer shall pay an employee for overtime at a wage rate of one and one half times the employee's regular rate for hours worked in excess of forty (40) hours in one workweek."

39. Plaintiffs regularly worked more than forty (40) hours a week while working for Defendants.

40. Thomas McGrath is an employer, within the meaning contemplated, pursuant to New York Labor Law Article 19 § 651(6) and the supporting New York State Department of Labor Regulations.

41. Plaintiffs are employees within the meaning contemplated, pursuant to New York Labor Law Article 19 § 651(5) and the supporting New York State Department of Labor Regulations.

42. Defendants failed to pay Plaintiffs overtime wages for all hours worked over forty (40) in any given week, in violation of Title 12 NYCRR § 146-1.4 and N.Y. Lab. Law § 663.

43. Upon information and belief, Defendants' failure to pay Plaintiffs their earned overtime wages was willful.

44. By the foregoing reasons, Defendants have violated Title 12 NYCRR § 146-1.4 and N.Y. Lab. Law § 663, and are liable to the Plaintiffs in an amount to be determined at trial, plus interest, damages, attorneys' fees and costs.

THIRD CAUSE OF ACTION AGAINST DEFENDANTS:
NEW YORK IMPROPER PAY STUBS AND DOCUMENTATION

45. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 44

hereof.

46. Pursuant to New York Labor Law §§ 198-1(d) and 195 and 12 NYCRR § 146-2.2 and 2.3, an employer is required to provide its employee with a paystub that accurately reflects the rate of pay, the hours worked and the amounts deducted. The paystubs must include: the employee's rate or rates of pay; the overtime rate of pay, if the employee is subject to overtime regulations; the basis of wage payment (per hour, per shift, per week, piece rate, commission, etc.); any allowances the employer intends to claim as part of the minimum wage including tip, meal, and lodging allowances; the regular pay day; the employer's name and any names under which the employer does business (DBA); the physical address of the employer's main office or principal place of business and, if different, the employer's mailing address ; and the employer's telephone number.

47. According to New York Labor Law § 198-1(d), Plaintiffs are entitled to $100 for every week in which they did not receive a pay stub.

48. Plaintiff did not receive paystubs each week that they worked.

49. By the foregoing reasons, Defendants have violated New York Labor Law §§ 198-1(d) and 195 and 12 NYCRR § 146-2.2 and 2.3 and are liable to the Plaintiffs in an amount to be determined at trial, plus interest, attorneys' fees and costs.

WHEREFORE, Plaintiffs demands judgment:

(1) on their first cause of action against Defendants in an amount to be determined at trial, plus liquidated damages in the amount equal to the amount of unpaid wages, plus attorneys' fees and costs,

(2) on their second cause of action against Defendants in an amount to be determined at trial, plus liquidated damages in the amount equal to the amount of unpaid wages, interest,

attorneys' fees, and costs;

(3) on their third cause of action against Defendants in an amount to be determined at trial, plus liquidated damages, interest, attorneys' fees, and costs, pursuant to the cited Labor Law sections; and

(4) such other and further relief the Court deems just and proper.

Dated: New York, New York
March 9, 2017

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